



ABORIGINAL HOUSING VICTORIA

Aboriginal Housing Victoria

Submission to Yoorrook Inquiry into Systemic Injustice in the Criminal Justice System

Introduction

Aboriginal Housing Victoria welcomes this opportunity to make a submission to the Yoorrook Justice Commission's Inquiry into Systemic Injustice in the Criminal Justice System. Aboriginal Housing Victoria (AHV) is an Aboriginal community organisation responsible for managing over 1,500 rental properties for Aboriginal and /or Torres Strait Islander people living in Victoria. ***Our vision is to ensure that Aboriginal Victorians secure appropriate, affordable housing as a pathway to better lives and stronger communities.***

In addition to being the largest Aboriginal Registered Housing Agency in Australia and currently the only Aboriginal Registered Housing Agency in Victoria, AHV is the lead agency for Victoria's Aboriginal housing and homelessness policy, Mana-na woorn-tyeen maar-takoort. As the housing policy lead in the Aboriginal community, AHV has dual roles to hold the Government to account in securing the resources and reforms to implement the policy, while we support sector development to empower Victoria's Aboriginal community to determine its chosen housing future.

AHV's housing services are targeted to those most in need of support. Through the provision of secure housing by an Aboriginal landlord, AHV helps strengthen and maintain Aboriginal communities and cultural ties.

Our Submission

While this submission focuses primarily on the criminal justice system, it also alludes to systemic failures in the relationship with the child protection system, given Yoorrook's parallel inquiry on that subject.

Despite the significant number of inquiries already conducted revealing that the absence of secure, safe housing is a key driver of demand in both systems, housing provision is curiously absent from the Burra Lotpa Dunguludja Outcomes Framework (as well as from the Government's response to transition from out of home care). It receives no explicit attention as a domain, a goal or an outcome as the framework below shows.

The *Burra Lotjpa Dunguludja* Outcomes Framework

Domains	Goals	Outcomes
1. Strong and safe Aboriginal families and communities	1.1 Aboriginal families are strong and resilient	1.1.1 People are more connected to their family, community, country and culture
		1.1.2 Families are enabled to address justice issues and minimise the effects of crime and justice system involvement
		1.1.3 Families have greater awareness and ability to protect their civil rights
	1.2 Aboriginal communities are safer	1.2.1 Victims and witnesses are better supported to manage and minimise the effects of crime
		1.2.2 Communities are more enabled to address local justice issues
		1.2.3 Less conflict and violence in communities
2. Fewer Aboriginal people in the criminal justice system	2.1 Aboriginal people are not disproportionately worse off under policies and legislation	2.1.1 Disproportionate impacts are identified and remedied when drafting new policies and legislation
		2.1.2 Disproportionate impacts of existing justice policies and legislation are identified and remedied
	2.2 Fewer Aboriginal people enter the criminal justice system	2.2.1 Fewer young people become involved with the criminal justice system
		2.2.2 An individual's first contact with the criminal justice system is also their last
	2.3 Fewer Aboriginal people progress through the criminal justice system	2.3.1 More people are diverted from further contact with the criminal justice system
		2.3.2 Fewer people are remanded into custody
		2.3.3 More people successfully address fines, warrants and/or meet conditions of orders and sentences
	2.4 Fewer Aboriginal people return to the criminal justice system	2.4.1 People build resilience whilst in contact with the justice system
		2.4.2 Drivers of people's offending are addressed whilst in contact with the justice system
		2.4.3 People are supported to transition from the justice system and reintegrate into their communities
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	3. A more effective justice system with greater Aboriginal control	3.1 The needs of Aboriginal people are met through a more culturally-informed and safe system
3.1.2 More people are able to access justice programs and services that are trauma informed, restorative and therapeutic		
3.2 A strong and effective Aboriginal community controlled justice sector		3.2.1 Aboriginal community controlled organisations are enabled to deliver a growing share of justice programs and services
		3.2.2 A stronger, skilled and supported Aboriginal justice workforce
4. Greater self-determination in the justice sector	4.1 Greater accountability for justice outcomes	4.1.1 Independent oversight of Aboriginal justice outcomes
		4.1.2 Increased Aboriginal community ownership of and access to data
	4.2 Greater Aboriginal community leadership and strategic decision making	4.2.1 Aboriginal people have greater roles in leadership, governance and decision making
		4.2.2 Resource allocation reflects Aboriginal community priorities

Source: Aboriginal Justice Agreement 4

The thesis of this submission is that – without a vast improvement in housing provision for Aboriginal families and former prisoners - rates of remand will continue to rise; rates of recidivism will continue to deteriorate; children will continue to move into child protection as their parents are incarcerated; and the harmful impacts on families of prisoners returning to their communities with unresolved trauma will continue unabated. The outcomes framework for the fifth generation Aboriginal Justice Agreement must reflect the primacy of improved housing in resolving over-representation of Aboriginal people in the criminal justice system.

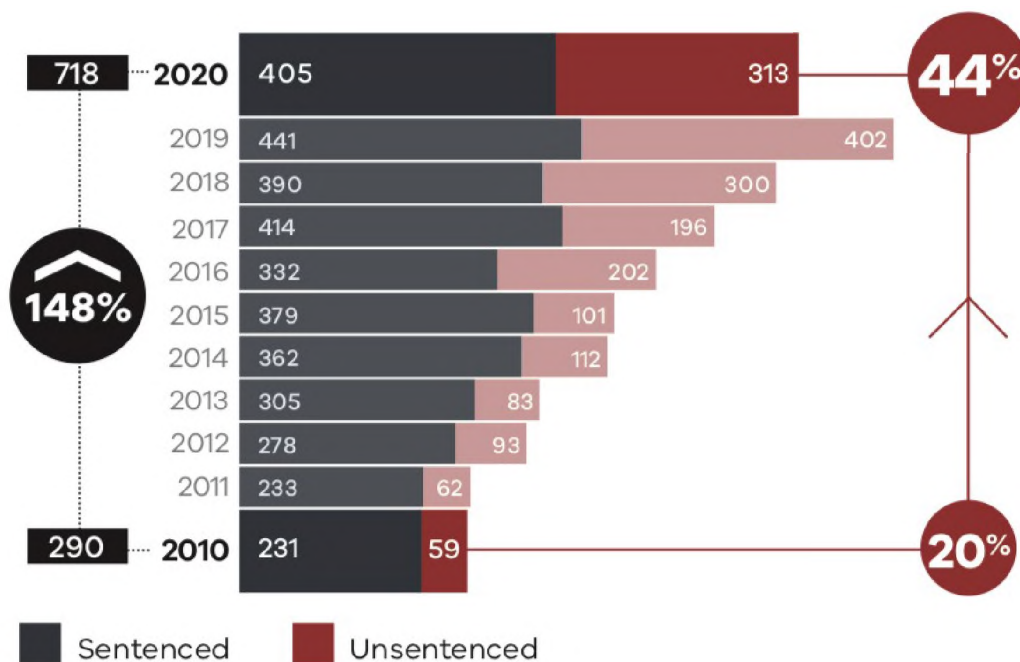
People who work in the system know this. The deficit in safe, affordable housing is raised consistently at Aboriginal Justice Forum (AJF) meetings at all levels as a core impediment to reducing over-representation. The shortfall in housing for former prisoners was also a major theme at the second Aboriginal Housing and Homelessness Summit held in Melbourne in August, where it was agreed that the dearth of affordable housing coupled with a significant gap in post release community reintegration support services is impeding reform and rehabilitation of former prisoners and failing the vulnerable communities attempting to support them.

Rising Rates of Sentenced and Unsented Aboriginal Prisoners

According to the *Corrections Victoria Annual Offender Statistical Profile 2010-2020*:

“The number of Aboriginal people in prison on remand has increased significantly since 2010 (431 per cent). In 2020, 44 per cent of Aboriginal people in prison were on remand compared with 20 per cent in 2010. The proportion of Aboriginal people in prison increased from six per cent in 2010 to 10 per cent in 2020.”

Figure 1: Profile of Aboriginal People in Victorian Prisons 2010 to 2020



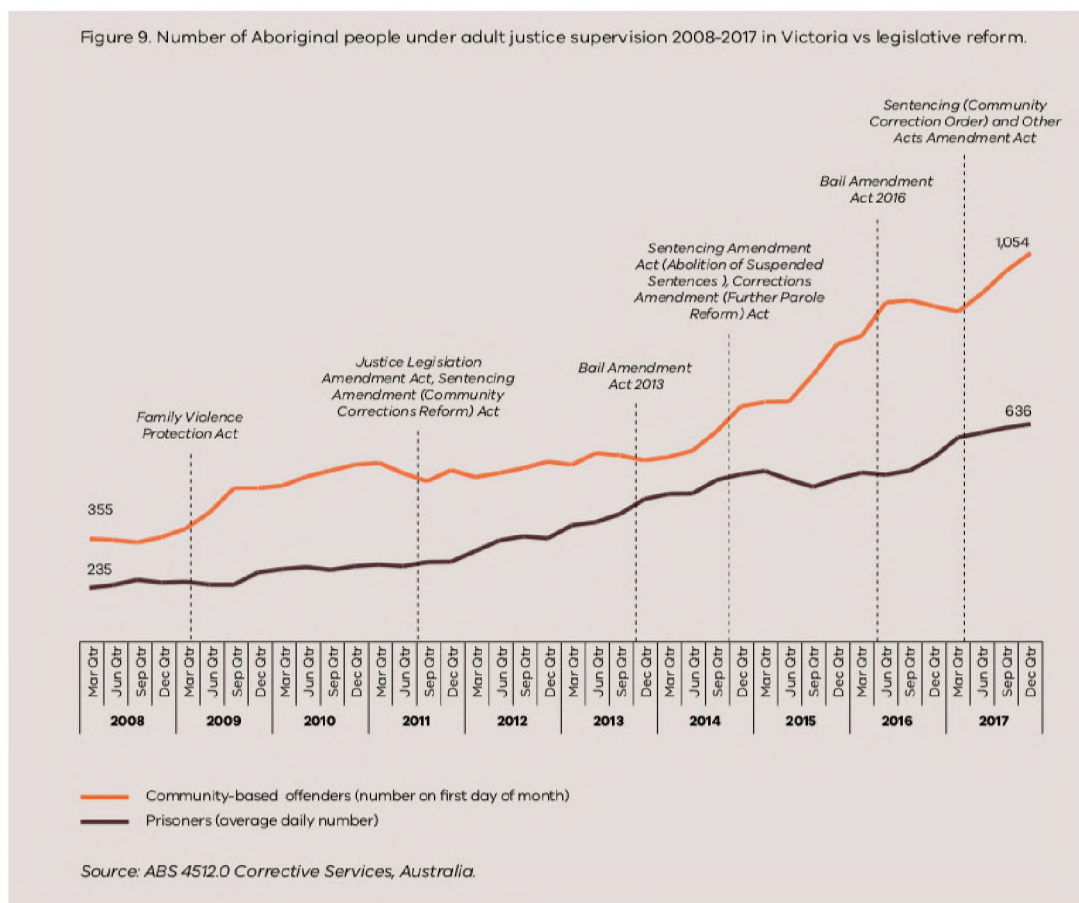
Source: Corrections Victoria Annual Offender Statistical Profile 2010-2020

Appalling increases in the incarceration of unsentenced Aboriginal prisoners are a grim and avoidable fact of life in Victoria over the past decade. This statistic speaks to perhaps the most serious failure in Victorian public policy of the past decade. Knowing everything we do about the legacy of past injustice and the intergenerational trauma caused by punitive colonial practices, to be escalating the imprisonment of unsentenced Aboriginal people at this rate in Victoria at this time is completely unacceptable. For a 431 per cent increase in the number of Aboriginal prisoners on remand to be called 'significant' is an egregious understatement of the evidence.

These results may not be the result of deliberate targeting of Aboriginal people, they may be the result of a complex set of failures of interacting systems. But nothing can excuse this level of systemic public policy failure and the core drivers must be exposed and addressed to urgently turn this trend into reverse. They are not difficult to find.

Rightly, there has been significant attention paid to a series of disastrous legislative amendments since 2012, each to have been followed by a rise in the number of Aboriginal prisoners in Victoria: the Bail Amendment Acts of 2013 and 2016, the Sentencing Amendment Acts of 2014 and 2017 and the Corrections Amendment Act of 2014 are conspicuous examples. Collectively, these legislative reforms meant that Aboriginal people were less likely to be bailed, to have their sentence suspended, to receive parole or to have the wider circumstances of their structural disadvantage considered in their sentencing. Completely unsurprisingly, the number of Aboriginal prisoners in our state doubled in around five years to be 1054 by December 2017. These policies amount to a form of structural racism. If the intent was confused, the outcomes do not lie.

Figure 2: Number of Aboriginal people under adult justice supervision 2008-2017 in Victoria vs legislative reform



Source: Aboriginal Justice Agreement 4, p.20

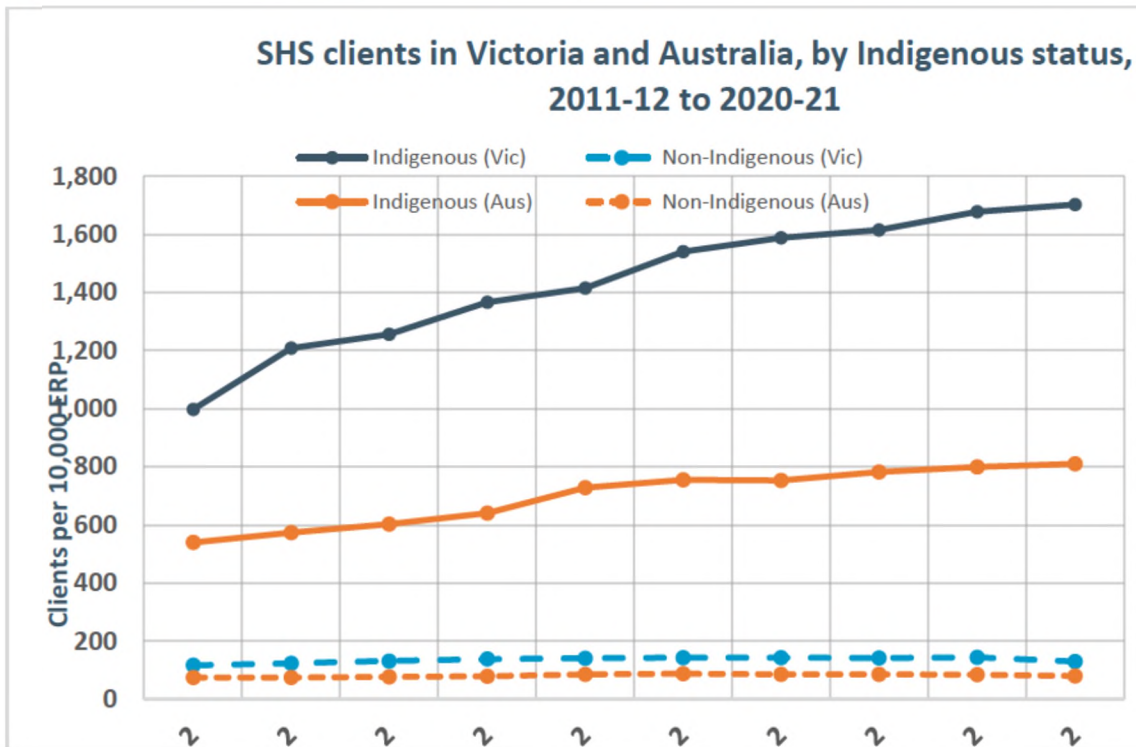
Between 2010 and 2020 the number of Aboriginal people in prison increased by 148 per cent. Over the 10 years to 2020 the Aboriginal imprisonment rate increased from 1,106.4 to 1,837.7 per 100,000 Victorian adult Aboriginal population¹.

While legislative changes to bail, parole and sentencing have been one critical means of trapping Aboriginal people in the corrections system, far less attention has been paid to significant increases in Aboriginal homelessness over the same period, which has had a significant compounding affect.

Paralleling the rise in incarceration has been a huge increase in people seeking homeless support services, from 10 per cent of the Aboriginal population in 2010 to more than 17 per cent in 2021. Around half of these people are homeless when they seek support and the majority continue to be homeless when their period of support ends. There is simply no social or affordable housing for most of these people. Ninety-five per cent of those requiring long-term accommodation are turned away. The AJA4 estimates that 37 per cent of the Victorian Aboriginal population has experienced homelessness. This is nothing short of a scandal.

¹ Corrections Victoria Annual Offender Statistical Profile 2010-2020

Figure 3: Proportion of population seeking Homeless Assistance 2011-12 to 2020-21



Source: DFFH and AHV, Mana-na worn-tyeen maar-takoort Annual Report Card, 2022

One consequence of one in six Aboriginal people seeking homeless support each year in our state is that prison has become de facto accommodation for growing numbers of our First Nations people. As the chart above demonstrates, rates of housing distress are higher in Victoria than other Australian jurisdictions. The fact that Victoria has the lowest levels of social housing per capita in Australia helps explain why this is so. More funds spent on social housing and less on prisons is a blindingly obvious part of the solution.

Interface with Child Protection

The absence of social and affordable housing makes it more likely that the default policy will be to remand unsentenced Aboriginal people. Bail, like parole, is regularly denied if prisoners have no fixed address, leading to an increase in sentenced and unsentenced Aboriginal people in prison.² New bail conditions also now apply to low-level offences, drawing more Aboriginal women into the net of those incarcerated without conviction.³ The legislative reforms, interacting with low levels of housing, have been enormously and predictably damaging to Victorian Aboriginal families as more and more women are held on remand, unable to provide a stable presence in the home for their children.⁴ These retrograde policies drive more and more Aboriginal children into out of home care (OOHC) where their risk of future homelessness is dramatically increased.

² Fitzroy Legal Service and La Trobe Centre for Health, Law and Society, *Constellation of Circumstances: The Drivers of Women’s Increasing Rates of Remand in Victoria*, (July 2020) https://d3n8a8pro7vhmx.cloudfront.net/fitzroylegal/pages/52/attachments/original/1594001770/Constellation_of_Circumstances_Report_digital_landscape.pdf?1594001770

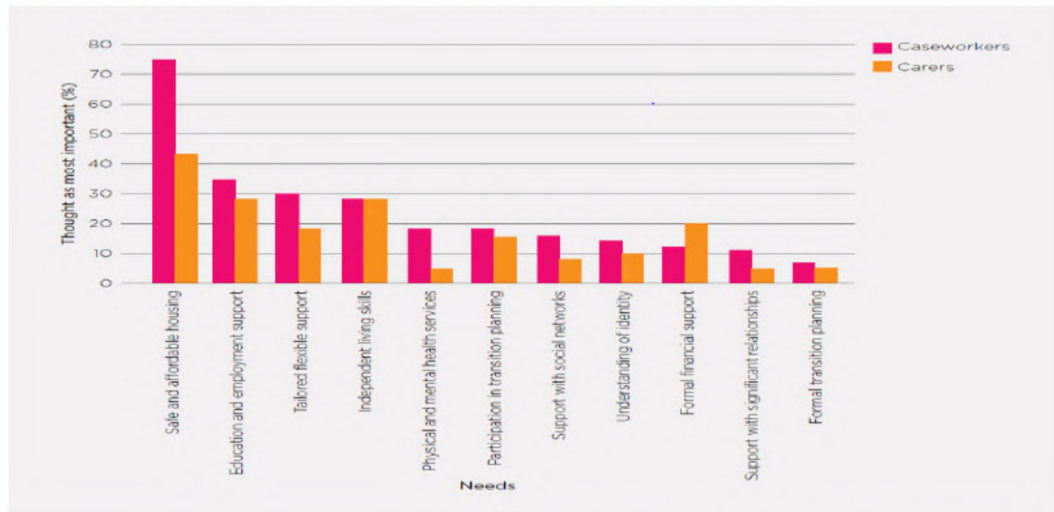
³ Australian Institute of Criminology, *Indigenous women’s offending pattern: a Literature Review*, (2010) <https://www.aic.gov.au/sites/default/files/2020-05/rpp107.pdf> pg.20

⁴ Fitzroy Legal Service and the La Trobe Centre for Health, Law and Society, *A Constellation of Circumstances: The Drivers of Women’s Increasing Rates of Remand in Victoria*, (July 2020) https://d3n8a8pro7vhmx.cloudfront.net/fitzroylegal/pages/52/attachments/original/1594001770/Constellation_of_Circumstances_Report_digital_landscape.pdf?1594001770

The State Government’s *Beyond 18: Longitudinal Study on Young People Leaving Care* revealed that those closest to children transitioning from care (carers and case managers) identify safe and affordable housing as the single most critical need these young people have as Figure 4 clearly illustrates.

Figure 4: Carer and caseworker perceptions of care leavers’ most important needs

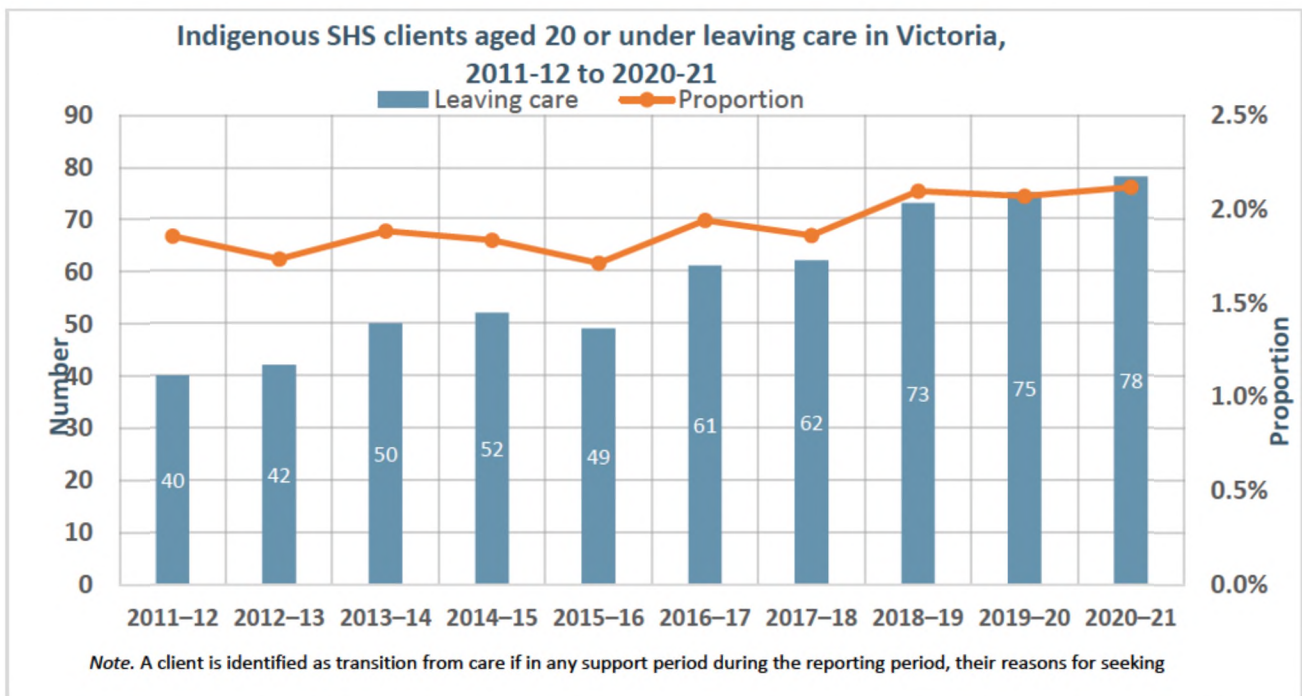
Figure 4.2: Carer and caseworker perceptions of care leavers’ most important needs



Source: *Beyond 18: Longitudinal Study on Young People Leaving Care 4*

Despite this, housing is the need least likely to be met. It appears that most of these young people present in the homelessness system after leaving care, making up around 2% of Specialist Homeless Support (SHS) clients.

Figure 5: Indigenous SHS clients aged 20 or under leaving care in Victoria 2011-12 to 2020-21 as a proportion of all SHS clients



Source: DFFH and AHV, *Mana-na worn-tyeen maar-takoort Annual Report Card, 2022*

AHV analysis comparing the numbers of young people leaving care each year with the numbers of care leavers presenting as clients of the specialist homeless support system closely matched. For example for the years 2017-18, 77 left care and 62 sought homeless support.

Many of these young people are likely originally to have become clients of the out of home care system because their parents had been locked up. Faced with homelessness after leaving care, many subsequently appear in the adult corrections system. This ridiculous and devastating cycle must be interrupted.

In a report released on 2 April 2020 – *Children at the Intersection of Child Protection and Youth Justice Across Victoria* – it was revealed that 1938 of 5063 (or 38%) of all children and young people sentenced or diverted in the justice system in the calendar years 2016 and 2017 had been the subject of a child protection report. Of these only 2 per cent had contact with the justice system before coming into contact with the child protection system. The same report found that the more carers a child had the more likely they were to appear in court.

Aboriginal children are vastly over-represented in both out of home care and juvenile justice systems, often setting them on a path toward truncated, trauma-filled lives that end in adult prisons. But safe, secure housing options could help break these cycles. The parents of these children know this. Professional carers and case managers know it too.

The deficit in safe, affordable housing options is continuing despite the clear risk of incarceration, drug dependency, early unplanned pregnancies (resulting in child removal) and homelessness of failing to provide adequate housing to young people exiting care or youth justice.

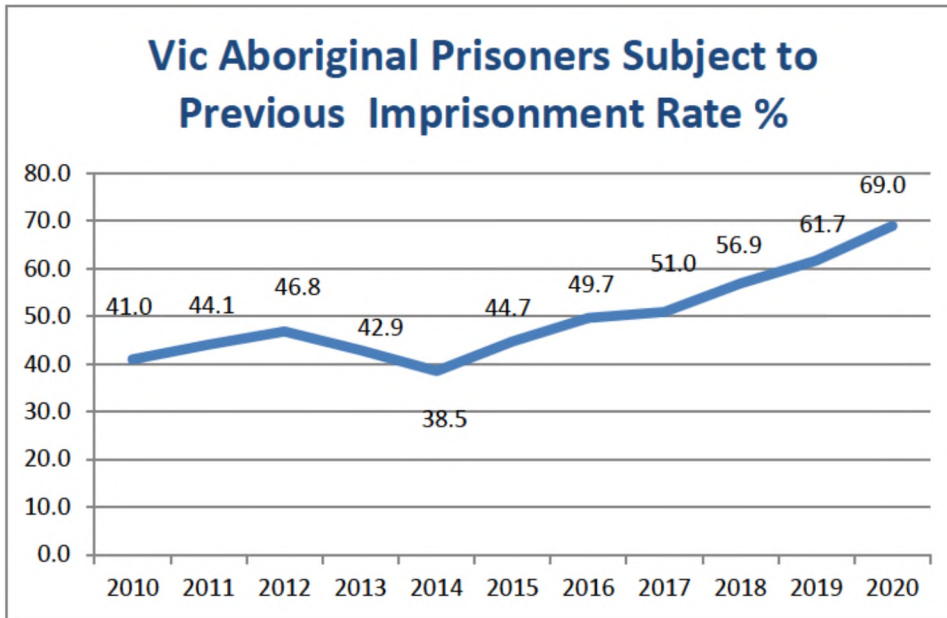
In addition to the barriers faced by Aboriginal Victorians when accessing affordable housing options, the private rental market is failing to provide alternatives. A recent report into the racism with in the private rental market led by the Commissioner for Residential Tenancies in partnership with AHV, illustrated that Aboriginal people are either priced out of a competitive market through rental bidding, or are being excluded through racial discrimination.

Finding 20 of the 2021 Our Youth Our Way Report by the Aboriginal Child Safety Commissioner was that: “A significant proportion of Aboriginal children and young people in the youth justice system experience housing insecurity. For some young people, insecure housing and involvement in the youth justice system are directly linked. Supported accommodation can assist these young people to stay out of the youth justice system.”

Reducing Recidivism

Goal 2.4 of AJA4 is that “Fewer Aboriginal people return to the criminal justice system”. But rates of recidivism are significantly higher for Aboriginal prisoners and the percentage of those returning to prison following previous imprisonment has been rising inexorably since 2014 as the chart below shows.

Figure 6: Victorian Aboriginal Prisoners subject to Previous Imprisonment 2010-2020



Source: AHV analysis of Corrections Victoria Annual Statistical Survey 2010-2020, Table 1.4

In the context of Goal 2.4 “Fewer Aboriginal people return to the criminal justice system” the AJA4 acknowledges that:

“Barriers to gaining employment and housing are two of the greatest risks to successful reintegration. The barriers to employment for exiting prisoners are serious and include their criminal record, lack of skills, lack of recent work experience and poor education. Compounded by a lack of stable housing, these two factors combine to quickly produce circumstances likely to lead to re-offending.”

The graph below underlines the link between lack of housing options and recidivism.

Figure 7: Aboriginal People Exiting Custodial Settings into the Specialist Homeless Support System 2011-12 to 2020-21



Source: DFFH and AHV, Mana-na worn-tyeen maar-takoort Annual Report Card, 2022

Exiting prisoners now constitute 12 per cent of all Aboriginal SHS clients (935 people in 2020-21). In 2011-12 they comprised just 5 per cent. When more than one in ten Aboriginal people in our state seeking homeless support is leaving prison we are witnessing an escalating crisis. These people have literally nowhere to go. Doherty and McNicol from Elizabeth Morgan House in Melbourne report that “half of all women exiting prison expect to be homeless on release.”⁵

While ever we ignore the need to house people who have been incarcerated we are also ignoring the needs of their families and wider communities. Lack of appropriate housing after prison drives reoffending as prisoners who are homeless upon exiting prison return in greater numbers.⁶ On release it acts as a barrier to reunification with children, the absence of stable housing keeping children and parents apart as children are left languishing in child protection and out-of-home-care (OOHC) services.

Two nights of accommodation in a motel is not an adequate level of support to successfully transition from prison. Case managers working with these people argue consistently that homeless ex-prisoners need at least three months of transitional accommodation to obviate the risk of them re-offending and returning to prison. While as a community we fail to resolve this challenge we are denying people a fair chance of rehabilitation and recovery. Prison is, of course, a vastly more expensive public policy option than the provision of decent housing. If we are serious about crime prevention and community safety we will give ex-prisoners a chance at rehabilitation by providing suitable transitional housing options. If we focus on community safety outcomes rather than some form of distorted punitive ideology this becomes obvious.

Rare examples of success do exist, albeit on a modest scale. The 2022 Aboriginal Housing and Homelessness Summit heard that the *Homelessness to a Home* program, combining housing with intensive care packages, had resulted in 5-6 Aboriginal clients with chronic homelessness and a lifelong history of recidivism (since coming into contact with OOHC systems) have now maintained their properties for a year with great success. Some of these people have now been out of prison for the longest period in their adult lives. Housing twinned with intensive support is expensive, but less expensive than prison, and has been proven to be effective.

But Victoria requires an expansion of social, affordable and supported housing on a massive scale to begin to reverse growing trends of incarceration and child removal of First Nations people in our state. It is essential that the challenge is tackled and that housing provision receives the policy primacy it deserves in core policy templates, including future iterations of the AJA, to begin to turn this crisis around.

⁵ Jo Doherty, Ella McNicol, *The Need for More Aboriginal-run Refuges*, Parity Volume 34, Issue 9, November 2021

⁶ Australian Institute of Criminology, Research Report, *How much does prison really cost? Comparing the costs of imprisonment with community corrections*, (2018) https://www.aic.gov.au/sites/default/files/2020-05/rr_05_240418_2.pdf pg. 55

Conclusion and Next Steps

This submission ends with a series of Future Directions in this policy space that are consistent with discussions at the August 2022 state-wide Aboriginal Housing and Homelessness Summit.

1. The Victorian Government needs to urgently adjust its whole of Government policy priorities to increase access to housing for people trying to exit the justice system. Doing so would improve community safety, achieve cost savings for the Victorian community and begin to remove the shame to our state of Victoria's First Nations People being amongst the most incarcerated people on earth.
2. The Aboriginal Justice Caucus and the Department of Justice and Community Safety commence work to develop evidence of:
 - a. the housing needs of Aboriginal people involved in the criminal justice system;
 - b. the impact of stable, secure and affordable housing on key justice objectives including reducing recidivism, reducing offending and improving rehabilitation and reintegration; and,
 - c. justice housing solutions for Aboriginal people involved in the criminal justice system, including on bail and exiting gaol, which have a positive impact on key justice objectives and outcomes.
3. Consider adopting a priority action and investment strategy 'meeting the housing needs of Aboriginal people involved in the criminal justice' in the review and next iteration of the Aboriginal Justice Agreement.
4. Develop monitoring and accountability mechanisms that include reporting on justice related housing outcomes to strengthen oversight.
5. Embed homelessness of exiting prisoners in the metrics of performance on recidivism of the state's justice agencies given its proven link with re-offending.
6. Implement relevant recommendations from the *Our Youth Our Way* Report from the Aboriginal Youth Justice Commissioner, including:
 - a. That the Victorian Government establish Aboriginal community-controlled crisis accommodation for Aboriginal children and young people in every region, informed by the model provided by Nungurra Youth Accommodation Services. (Recommendation 43)
 - b. That the Victorian Government establish at least 4 Aboriginal community-controlled youth foyers across the state (increasing capacity by at least eighty beds), with consideration given to 3 regional locations and one metropolitan location. (Recommendation 44)
7. Institute a housing first approach for post-release prisoners with support services to enable viable tenancy. Without housing, other support services have limited long-term traction
8. Improve holistic services while in prison in preparation for managing the transition out, including access to housing.
9. Require that each exiting prisoner has a plan in place providing for 3 months of transitional accommodation.
10. Consult families of people in contact with the justice system on their transition needs.
11. Design new investment models, which bring together capital investment in accommodation and culturally appropriate, structured service supports that can make the accommodation for people with complex needs sustainable.

12. Fund and implement new transitional and emergency housing options to respond to the immediate deficit in housing which is driving people back into youth justice and prison settings.
13. Make Intake Assessment and Planning culturally safe and ensure it includes an exit plan with secure housing central to transition.
14. Evaluate and expand on successful models such as:
 - a. the H2H program of housing with intensive care packages (5-6 clients with chronic homelessness and recidivism from across their lives since coming into contact with OOHC systems have now maintained their properties for a year with great success, they're working and some are out of prison for the longest period in their adult lives).

Thank you once again for your consideration of this submission.



Darren Smith
Chief Executive Officer
Aboriginal Housing Victoria

November 2022